Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

ROYAL CARIBBEAN CRUISES, LTD.,

Petitioner,

v.

CLAUDIA DUARTE,

Respondent.

On Petition For A Writ Of Certiorari To The District Court Of Appeal, Third District Of Florida

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether under federal admiralty law a former crewmember of a shipowner who is no longer employed with the shipowner but receiving maintenance and cure is considered a "seaman" in the service of the ship and therefore entitled to maintenance and cure benefits for all future injuries and illness incurred, even if incurred while engaged in personal activities?

LIST OF PARTIES AND CORPORATE DISCLOSURE STATEMENT

Petitioner respectfully informs the Court that the caption of the case contains the names of all parties to the proceeding. Pursuant to Supreme Court Rule 29.6, Petitioner additionally informs the Court that there is no parent or publicly held company that owns ten percent or more of the stock of Petitioner, Royal Caribbean Cruises, Ltd.

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CITATION TO OPINION RENDERED BY STATE APPELLATE COURT

The opinion of the District Court of Appeal, Third District of Florida is cited as follows: *Duarte v. Royal Caribbean Cruises, Ltd.*, 761 So. 2d 367 (Fla. 3d DCA 2000), *rehearing denied* July 19, 2000, *review denied* April 3, 2001.

JURISDICTIONAL STATEMENT

The District Court of Florida decision sought to be reviewed in this case was entered on April 5, 2000. The Third District Court of Appeal subsequently denied a timely filed motion for rehearing on July 19, 2000, and the Petitioner thereafter petitioned the Florida Supreme Court for discretionary review based on express and direct conflict with other Florida appellate court decisions interpreting federal admiralty law. The Florida Supreme Court issued an order denying the petition for discretionary review on April 3, 2001, with one justice dissenting.

The Petitioner respectfully submits that this Court should exercise its judicial discretion and review this case on a writ of certiorari because the Third District Court of Appeal has herein entered a decision which is in express and direct conflict with a decision of this Court and lower federal courts on an extremely consequential matter pertaining to federal admiralty law. The opinion is the first of its kind in any reported state or federal court opinion in the country, and for the first time in nearly a century of federal admiralty jurisprudence drastically extends the

potential liability of shipowners for illnesses and injuries experienced by their former crewmembers.

Specifically, the Third District's holding that a former employee of a shipowner who is engaged in personal business can be considered a "seaman" solely by virtue of her receipt of maintenance and cure directly conflicts with this Court's decisions in *Chandris, Inc. v. Latsis*, 515 U.S. 347 (1995), and *Farrell v. United States*, 336 U.S. 511 (1949), as well as other opinions from this Court and lower federal courts. These opinions hold that in order to be considered a "seaman," a claimant must establish that at the time she was injured she had an employment-related connection to a vessel in navigation, that these duties contributed to the function of the vessel or to the accomplishment of its mission, and that the connection to the vessel was substantial in terms of its duration and nature. The lower court decision ignores this precedent, and attempts to expand the definition of "seaman" well beyond the long-standing limits that this Court has established.

CONSTITUTIONAL PROVISIONS INVOLVED

Article III of the United States Constitution provides in pertinent part:

> **Section 1.** The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. . . .

Section 2. The judicial Power shall extend . . . to all Cases of admiralty and maritime Jurisdiction; . . .

STATEMENT OF THE CASE AND FACTS

Respondent Claudia Duarte ("Duarte"), a citizen of Colombia, was formerly employed as a waitress on Petitioner Royal Caribbean Cruises, Ltd.'s ("RCCL") luxury cruise liner the "Sovereign of the Seas" under an employment contract with RCCL that was effective from September 6, 1996 until March 7, 1997. (Appendix ("App.") 7-8, 33). On September 14, 1996, Duarte signed off the Sovereign of the Seas to receive medical treatment provided by RCCL in Miami, Florida for a knee injury she allegedly sustained on the ship. RCCL's duty to provide medical treatment to Duarte arose from its duty to provide maintenance and cure to its seamen, which is a common law doctrine that obligates shipowners to provide their crewmembers with medical treatment, lodging, and other expenses when they incur illnesses and injuries while they are "in the service of the ship."

While Duarte was signed off the ship and receiving maintenance and cure for her knee injury, she was diagnosed with thyroid cancer. (App. 8). Because she was still under contract with RCCL at the time of her diagnosis, RCCL additionally provided her with medical treatment for her cancer. On March 7, 1997, while Duarte was still receiving maintenance and cure for her thyroid cancer, her employment contract with RCCL expired. Although she remained in Miami to continue her radiation treatment, she did not renew her employment contract, did

not return to work for RCCL, and was not answerable to the call of any RCCL ship. (App. 8, 12-13).

On the evening of December 14, 1997, more than nine months after her employment contract with RCCL had expired, while a passenger in an automobile driven by a friend in Miami, Duarte was injured in an accident involving another vehicle operated by an intoxicated and underinsured driver. (App. 8, 32). As a result of the accident, Duarte's foot had to be surgically reattached in a Miami hospital, where she claimed to have incurred medical expenses for care and treatment. Duarte thereafter sued RCCL "under the General Maritime Law" to recover maintenance and cure for the injuries she sustained in the automobile accident.

RCCL answered Duarte's complaint and subsequently moved the trial court for final summary judgment on Duarte's claims, contending that under general federal maritime law, RCCL had no duty to provide maintenance and cure to Duarte for the injuries sustained in the automobile accident because at the time of the accident Duarte "was not subject to the call of the ship, was not bound by a contract of employment, was not returning or departing from the vessel, and had absolutely no duty to perform [for] the vessel in any way whatsoever," as required for "seaman" status. (App. 32-33).

In her response in opposition to RCCL's motion for summary judgment, Duarte did not deny that she was not employed by RCCL and not answerable to the call of a ship's duty at the time of the automobile accident, but

maintained that she was nonetheless considered in the "service of a ship" because she was on a "medical parole" at the time of the accident with the sanction of the Immigration and Naturalization Service. (App. 42-45). At a hearing on RCCL's motion for summary judgment, Duarte's counsel again did not dispute RCCL's showing that Duarte was not under an employment contract or working for RCCL at the time of the automobile accident. (App. 12-13). In fact, Duarte's counsel acknowledged that Duarte did not meet the United States Supreme Court's definition of "seaman," contending that "had [Duarte] been injured in her hometown of Colombia, I would agree [that she was not a seaman]." (App. 16). Nonetheless, Duarte's counsel continued to assert the INS argument, and also maintained that under maritime law, Duarte's mere receipt of maintenance and cure for her thyroid cancer, which was totally unrelated to her former service as a seaman, rendered her "in the service of the ship" for as long as she was being treated for her cancer in the United States. (App. 12-18).

The trial court granted summary final judgment in favor of RCCL based on the longstanding law of the United States Supreme Court and lower federal courts holding that to be entitled to maintenance and cure, a former seaman had to be "in the service of a ship" at the time of the injury or illness, which in turn requires an employment relationship with the shipowner. (App. 3). Duarte appealed from the summary judgment in favor of RCCL to the District Court of Appeal, Third District of Florida. Duarte challenged the trial court's ruling on two primary federal law grounds: (1) that because Duarte was receiving maintenance and cure for her thyroid cancer at

the time of her automobile accident she was "in the service of the ship" and thus entitled to maintenance and cure for the injuries she received in that accident and, alternatively, (2) that RCCL had a statutory duty under the Immigration and Nationality Act to pay for Duarte's medical care because of a statutorily required guarantee of payment that RCCL allegedly signed.

Duarte's INS argument was rejected or rendered moot by the Third District's ruling, as was a state law argument that Duarte also raised regarding her right to amend her complaint. The Third District, however, reversed the trial court's judgment in favor of RCCL in its entirety based on Duarte's argument that her mere receipt of maintenance and cure rendered her a "seaman" even months after her employment with RCCL had ended. The Third District held: "[T]he Appellant was receiving maintenance and cure at the time of the accident because she had yet to obtain maximum medical recovery. Under such a situation, a seaman is still in the service of the ship and thus entitled to maintenance and cure for the additional injuries incurred." (App. 2). The Third District thereafter denied a motion for rehearing, rehearing *en banc* and certification. (App. 20). Upon a timely filed petition to invoke discretionary jurisdiction, in an order dated April 3, 2001, the Florida Supreme Court declined to accept jurisdiction of this federal issue, with one justice dissenting. (App. 21).

The Third District's opinion holds that as long as a former crewmember is receiving maintenance and cure for any injury or illness incurred while she was in the service of the ship, she is still considered a "seaman" for as long as she receives maintenance and cure, even if

subsequent injuries are unrelated to her former employment with the ship and notwithstanding the fact that she is no longer employed. The Petitioner submits that this holding is in express and direct conflict with a century of opinions of this Court holding that a shipowner's duty to provide maintenance and cure extends to injuries or illnesses incurred by those who had an employment-related connection to a vessel in navigation and were thus in the service of a ship at the time of the incident.

REASONS FOR GRANTING THE WRIT

THE THIRD DISTRICT'S OPINION DRASTICALLY EXTENDS THE POTENTIAL LIABILITY OF SHIPOWNERS SUBJECT TO THE LAWS OF THE UNITED STATES, IN EXPRESS AND DIRECT CONFLICT WITH THE LAW OF THIS COURT HOLDING THAT TO BE A SEAMAN IN THE SERVICE OF THE SHIP AND THUS ENTITLED TO MAINTENANCE AND CURE, A CLAIMANT MUST HAVE HAD AN EMPLOYMENT-RELATED CONNECTION TO A VESSEL IN NAVIGATION AT THE TIME OF HER INJURY.

The Third District's opinion expressly and directly conflicts with almost a century of this Court's case law holding that an injured seaman is entitled to maintenance and cure *only* if he is in the service of a ship, *The Osceola*, 189 U.S. 158 (1903), which *requires* that the seaman was answerable to the call of duty and had a substantial connection to a vessel in navigation at the time of the injury-causing accident. *See Chandris, Inc. v. Latsis*, 515 U.S. 347, 368 (1995); *Farrell v. United States*, 336 U.S. 511, 516 (1949). The opinion dramatically changes the scope of

traditional maintenance and cure obligations of shipowners, never before imposed by a court in the United States. This Court should grant the Petition because of the dramatic effects the Third District's ruling will likely have on the liability of shipowners subject to the jurisdiction of the United States courts. The Third District's decision for the first time endorses a form of socialized medicine for seamen that was never contemplated by the creators of the doctrine of maintenance and cure, and conflicts with the history and purpose of maintenance and cure. Because the Third District's departure from this Court's jurisprudence is the first opinion of its kind ever in a state or federal court, it is currently binding on all state trial courts in Florida, and will likely impact future decisions in other jurisdictions.

A. The Third District's Opinion Directly and Expressly Conflicts with the Law of this Court.

Maintenance and cure is a right given to "seamen" by "the general maritime law in consequence of the seaman's status resulting from any shipping contract between the seaman and the master or the vessel." *See* MARTIN J. NORRIS, THE LAW OF SEAMEN § 26:2 (4th ed. 1985). The right "gives to the seaman, ill or injured in the service of the ship without willful misbehavior on his part, wages to the end of the voyage and subsistence, lodging and care to the point where the maximum cure attainable has been reached." *Id.* The shipowner's obligation, which stems from the ancient sea codes of the Middle Ages, *id.* at § 26:3, is "deep-rooted in maritime law and is an incident or implied term of a contract for maritime employment." *Id.* at § 26:2.

This Court has long held that a shipowner's duty to provide maintenance and cure can only arise when a crewmember suffers an injury or illness while "in the service of the ship." *Aguilar v. Standard Oil Co. of N.J.*, 318 U.S. 724, 726 (1943). Unless an injury occurs while the crewmember is "in the service of the ship," the crew member is not considered a "seaman" and no such duty arises. To qualify as a "seaman" in the service of the ship under maritime law,[1] it is necessary that at the time she sustained her injury or incurred her illness the claimant had a permanent or substantial connection to a vessel or fleet in navigation, *Chandris, Inc. v. Latsis*, 515 U.S. 347, 368 (1995), performed work that contributed to the function or accomplishment of the vessel's mission, *id.*, was an employee of the ship or shipping company, *id.*, and spent the majority of her time on a particular vessel or fleet, *id.* at 370. *See also McDermott Int'l, Inc. v. Wilander*, 498 U.S. 337, 355 (1991) (employment relationship is required in order for claimant to be "in the service of the ship"). As this Court has held, a seaman "in the service of the ship" is generally answerable to the ship's call of duty. *See Farrell v. United States*, 336 U.S. 511, 516 (1949).

Notwithstanding this Court's clear precedent, the Third District held that Duarte was a "seaman" in the "service of the ship" despite the fact that it was undisputed at the trial court level that at the time of her

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[1] The definition of "seaman" is the same under the Jones Act and general maritime law. *See Chandris, Inc. v. Latsis*, 515 U.S. 347, 355 (1995); *Braen v. Pfeifer Oil Transp. Co.*, 361 U.S. 129 (1959). Thus, Jones Act cases defining "seaman" can be analogized to these facts.

automobile accident Duarte was not employed by RCCL, was not answerable to the call of a ship's duty, and had not been under an employment contract with RCCL for more than nine months. There is simply no support for the Third District's conclusion that Duarte was nonetheless a "seaman" at the time of the accident because she had not reached maximum medical recovery for her thyroid cancer. The Third District's opinion disregards this Court's holdings in *Wilander*, *Chandris* and *Farrell*, among numerous other cases, which *require* an employment relationship to be in existence at the time of the accident, and is *not* in accord with the general maritime law established by this Court.

Duarte did not meet a single one of the factors that this Court has held constitutes a "seaman." She did not have any connection to a vessel or fleet at the time of the accident and was not answerable to the call of duty, as it was shown at the trial court level that at that time she had been signed off of the Sovereign of the Seas for at least a year, with no obligation to return for duty, and had been released from her employment contract for more than nine months, with no obligation for rehire. It is irrelevant that Duarte formerly served aboard a vessel. As this Court held in Chandris, "[w]hen a maritime worker's basic assignment changes, his seaman status may change as well." 515 U.S. at 372.

There was also no question below that at the time of the car accident, Duarte was not performing any work that contributed to the function of a vessel. Although Duarte attempted in her appeal to the Third District to characterize her medical parole as somehow contributing to the function of a vessel because RCCL, as the vessel

owner, was obliged to provide her with maintenance and cure, there is not a single case holding that a "contribution" to the function of a vessel can be so indirect. Duarte's mere receipt of maintenance and cure at the time of her automobile accident, with nothing more, did not have the slightest relationship to the function of any vessel in navigation.

Duarte also did not meet the mandatory employment relationship part of the test set out by this Court. It is undisputed that at the time of her accident Duarte was not working for RCCL, had not been a party to an employment contract with RCCL for more than nine months, and had no obligation to return to work aboard an RCCL vessel. Thus, the Third District should have held that because Duarte was not employed by RCCL at the time of her automobile accident, she was not a seaman as a matter of law. *See Chandris*, 515 U.S. at 368; *McDermott Internat'l, Inc. v. Wilander*, 498 U.S. 337, 355 (1991) ("The key to seaman status is employment-related connection to a vessel in navigation.").

Duarte also was not on "shore leave" when the accident occurred. "Shore leave" is confined to specific situations involving "blue water" seamen – crewmembers who are answerable to the ship's call of duty during such leaves. *See Shaw v. Ohio River Co.*, 526 F.2d 193, 197-98 (3d Cir. 1975). A blue water seaman is someone who, as a necessary incident of irregular shipboard employment, is authorized to go ashore "from time to time and place to place" for diversion and relief from the routine of the ship. *Sellers v. Dixilyn Corp.*, 433 F.2d 446, 448 (5th Cir. 1970). This Court has characterized "shore leave" as that period of time where seamen obtain relaxation "beyond

the confines of the ship." *Warren v. United States*, 340 U.S. 523, 529 (1951). Although shore leave is temporary, it is considered so integral to a voyage that it is "necessary if the [ship's] work is to go on." *Id.* Thus, a crewmember will be considered in the service of the ship if he or she was injured while engaging in an activity during a temporary onshore venture that took place while the ship was in port.

Unless a claimant is answerable to the call of a ship's duty while on shore, she is not a blue water seaman. *See Shaw*, 526 F.2d at 197-98. Accordingly, the federal courts have held that a crewmember is not considered to be a blue water seaman on "shore leave" if he or she falls ill or is injured while spending accumulated leave time after a regular crew change, *see Farrell*, 336 U.S. 511, attending to personal business on a protracted vacation between voyages, *see Haskell v. Socony Mobil Oil Co.*, 237 F.2d 707 (1st Cir. 1956), on a temporary leave of absence from the vessel's employment with the full intent to return to work, *see Blanco v. The S.S. Michael Tracy*, 272 F.2d 93 (4th Cir. 1959), living on shore, *see Liner v. J.B. Talley and Co., Inc.*, 618 F.2d 327, 332 (5th Cir. 1980) ("[A] seaman in Liner's position, who lives ashore, must prove that a shoreside injury was incurred while in the service of the ship."), traveling home from a drilling rig on which the employee worked, *see Sellers*, 433 F.2d at 448, or on shore between intermittent diving jobs aboard a vessel, *see Baker v. Ocean Sys., Inc.*, 454 F.2d 379, 383 (5th Cir. 1972). As the above-cited cases hold, because Duarte was not employed by or answerable to the call of duty of an RCCL ship at the time of her car accident, she was not on

a "shore leave" as defined by the case law and was therefore not "in the service of the ship."

Duarte's stay in the United States to receive maintenance and cure also did not constitute an "operational activity" of RCCL under the federal case law. Though "shore leave" can be considered an operational activity of a vessel, there is no case holding that a permanent discharge from a vessel can nonetheless constitute "shore leave" as long as the former employee is receiving maintenance and cure. For instance, in *Aguilar*, 318 U.S. 724, upon which Duarte incorrectly relied below in this contention, the claimants were injured after they left their ships on authorized shore leaves, with both injuries occurring as the claimants traversed the only available routes to or from their moored ships. Duarte was not injured while leaving or returning to a vessel, and was not engaged in an activity having any connection to a vessel in navigation.

The Third District's holding is in conflict with this Court's mandate that no state has the power to change or add to the settled maritime law in a way that would be "destructive of the 'uniformity and consistency at which the Constitution aimed on all subjects of a commercial character affecting the intercourse of the states and with each other or with foreign states'." *Chelentis v. Luckenbach S.S. Co.*, 247 U.S. 372, 382 (1918). Furthermore, the Third District's holding is simply too dramatic an extension of shipowners' liability to be left to a state court system. As this Court held more than half a century ago, such extreme extensions of the duty to provide benefits to seamen are best left to institutions other than the judiciary. *See Farrell*, 336 U.S. at 519.

Because the Third District's opinion starkly conflicts with this Court's longstanding maritime law requiring an employment relationship and connection to a vessel in order to obtain "seaman" status, and in doing so compromises the national uniformity of shipowners' potential liability under maritime law, this Court should grant the writ of certiorari.

B. The Third District's Opinion Disregards the History and Purpose of Maintenance and Cure.

The Third District's opinion also ignores the history and purpose of maintenance and cure, which must be considered when determining whether to extend a seaman's employment status for the purpose of maintenance and cure. *See Tran v. Captain Glyn, Inc.*, 909 F. Supp. 727, 733 (D. Haw. 1995). The ancient doctrines of maintenance and cure were created when the typical seaman had an utter lack of control over his circumstances while on the high seas, was subject to the call of the ship even when in port, and at all times was under the command of the vessel's officers. The degree of control required under those codes was never anything so tenuous as the "control" allegedly retained by RCCL – the sending and receipt of periodic maintenance and cure payments, the legally required submission of immigration forms to the INS, and the arrangement, pursuant to the former crewmember's demands, of land-based medical services. *See, e.g., Tran v. Captain Glyn, Inc.*, 909 F. Supp. 727 (D. Haw. 1995) (shipowner's delay of payment of seaman's share after voyage did not constitute requisite tie to ship that would obligate shipowner to provide maintenance and

cure for injury occurring after seaman's employment terminated).

The Third District's decision alters a century of jurisprudence and policy by rendering RCCL liable for injuries its former crewmember received while receiving maintenance and cure at a time that RCCL exercised no control over her circumstances. This ruling does not serve the policy interests that created the necessity for the doctrine, does not serve any maritime interests, and will cause shipowners to become total insurers of their former crewmembers.

The Third District's opinion also overlooks the fact that Duarte's automobile accident was not incident to a hazard of maritime employment. This Court has held that the protections afforded to seamen accrue when their employment "regularly exposes them to 'the special hazards and disadvantages to which they who go down to sea in ships are subjected'." *Chandris, Inc. v. Latsis*, 515 U.S. 347, 370 (1995), *citing Seas Shipping Co. v. Sieracki*, 328 U.S. 85, 104 (1949) (Stone, C.J., dissenting). According to this Court, seaman status only belongs to "those maritime workers who form the ship's company." *Chandris*, 515 U.S. at 362. At the time of her automobile accident, Duarte was not in any way exposed to the special hazards and disadvantages of a seafaring life. The illness that first warranted her receipt of maintenance and cure was not even remotely related to her employment, and its treatment could have been rendered in her home town in Colombia. Duarte was simply not in the "ship's company" at the time of her accident.

On-shore medical treatment and rehabilitation has never been considered in any admiralty court as an extension of the seaman's ship, and should not be so considered now. The ancient laws did not require vessel owners to provide on-board medical facilities, but allowed shipowners to remove ill seamen from their ships and provide comparable food and lodging. *See* NORRIS, § 26:3. Just as the codes from the Middle Ages did not require on-board medical facilities, it would be unreasonable to require modern cruise ships to provide state-of-the-art facilities and highly specialized physicians for the treatment of cancer and other maladies that require sophisticated, long-term medical care. There is no historical precedent that would have allowed Duarte's residence in Miami to be considered as or analogized to treatment on the ship.

Furthermore, Duarte was not "dumped" in a foreign port as may have been done centuries ago, but was taken off of the vessel in Miami because it was in her best interest to do so. She was not forced to stay in lodging provided by RCCL, but was residing in a house in which she chose to live. She was not cut off from her friends and family, and in fact was with a friend at the time she was injured in her automobile accident. She was not utterly dependent on RCCL, as she had the option of returning to her home in Colombia, finding employment, or otherwise following her own pursuits.

The policy concerns connected with imposing the duty of maintenance and cure are not implicated under these facts, but weigh in favor of not extending the doctrine in this situation. As the District Court of Hawaii has explained, "the doctrine serves the tripartite purpose of protecting seamen while ill in foreign ports, encouraging

shipowners to protect the seamen while in service, and inducing employment in the merchant marine." *Tran v. Captain Glyn, Inc.*, 909 F. Supp. 727, 733 (D. Haw. 1995). Holding RCCL liable under these facts would not encourage shipowners to protect their seamen while in service. Because Duarte was not answerable to the call of the ship at the time of her automobile accident, RCCL was not in a position to afford her protections other than its provision of maintenance and cure. It could not have created safer conditions in Miami, as it can do on its ships, and it certainly could not have lessened her chances of being struck by a drunk driver.

Similarly, the Third District's holding that RCCL is liable for the injuries received in the car accident will not induce employment in the merchant marine as was contemplated when the laws were made. Such incentive was needed in the days that the maintenance and cure doctrine was created, as a seafarer's life was extremely undesirable in the absence of special protections that would equalize the seaman's circumstances with those of his land-based counterparts. No extra inducement to become employed in a maritime position is necessary under these facts, and an imposition of liability in this case would not serve the purpose of creating such incentive.

Thus, the granting of a writ is additionally warranted due to the Third District's departure from the history and purpose of maintenance and cure and the public policy concerns which strongly weigh in favor of leaving the longstanding law intact.

C. The Third District's Opinion Poses Drastic Potential Ramifications on the Maritime Industry.

The Third District's holding for the first time renders vessel owners total insurers of any former crewmembers whose employment ended while they were receiving maintenance and cure. Pursuant to the Third District's opinion, barring Duarte's willful misbehavior, RCCL would have been liable for injuries Duarte received regardless of the activity she was engaged in at the time of her injury, wherever she was in the *world*. As long as Duarte continues to receive maintenance and cure for her thyroid cancer or foot injury from the car accident, which can continue for years, under the Third District's holding she will receive full health care coverage from RCCL whether she is injured while engaging in driving, contact sports, skydiving lessons, or even while working for a different employer. This form of socialized medicine was never contemplated by the federal courts, and for the first time will subject vessel owners to virtually unlimited liability for the health of a large number of former employees who no longer have any connection to a vessel.

Whereas this Court's long-established jurisprudence rendered shipowners liable for maintenance and cure until the seaman reached maximum medical recovery, the Third District's decision can leave shipowners liable in perpetuity. Duarte was taken off of the vessel after she was diagnosed with cancer and was entitled to cure because she was still under contract at that time (and therefore subject to the call of the vessel). While Duarte was receiving cure for her cancer, her contract expired.

Months later she received an injury while riding in a friend's car and, pursuant to the Third District's opinion, is entitled to continued maintenance and cure for that new injury. Under this holding, every time Duarte incurs any type of ailment – be it a cold, cancer or a physical injury – no matter how remote it was from her former maritime employment, RCCL will be obligated to pay for all medical expenses and the costs of lodging as long as it was incurred while Duarte was receiving payments for maintenance and cure. This, in turn, will extend RCCL's liability until Duarte reaches maximum recovery for each new ailment. As such, RCCL is forced to provide potential care to a *non-employee* for the duration of her life. This result was never intended by the creators of the doctrine that arose out of a need to protect seamen from the perils of a seafaring life, and would impose dramatic new potential liabilities on shipowners that are totally out of the shipowners' control. *See The W.H. Hoodless*, 38 F. Supp. 432, 434 (E.D. Pa. 1941) ("The ship is not an insurer and is not obligated to provide maintenance and cure beyond a reasonable period, nor for an indefinite length of time . . . ") (citation omitted).

D. A Decision by this Court would not Require the Resolution of Any Fact or State Law Issues, as the Third District's Opinion Involves a Pure Question of Federal Law.

Although Duarte attempted to create several factual issues on appeal to the Third District, it is important to note that the Third District's incorrect holding turned on a pure legal issue: Whether the receipt of maintenance and cure alone can confer "seaman" status. Thus, in

addition to the fact that the record shows that Duarte's non-employment with RCCL at the time of her accident was not disputed at the trial court level, the Third District's opinion necessarily holds that Duarte was not employed by RCCL or under contract with the cruise line at the time of her automobile accident.

Duarte also argued to the trial court and Third District that RCCL's act of obtaining medical leaves for Duarte in the United States through the Immigration and Naturalization Service, pursuant to Duarte's request, imposed a contractual obligation on RCCL to continue providing total medical insurance to Duarte as long as she was in the United States. RCCL asserted in response that neither the INS documents filled out by RCCL nor the federal case law or Immigration and Naturalization Act even suggested an implied contractual obligation imposed on shipowners. In any event, the Third District's opinion did not rely in any way on Duarte's argument or address RCCL's response, but rested on its independent interpretation of what constitutes a "seaman" under the general federal maritime law. Thus, this Court need not address any issues regarding a contractual obligation arising out of INS forms in this Petition.

Additionally, no state law issues are involved in this Petition. The Third District never reached Duarte's alternative state law issue of whether the trial court should have entitled her to amend her complaint, because it instead extended the law of this and the other federal Courts so that no amendment would be necessary. As explained, the Third District's decision rested purely on its incorrect extension of federal law.

CONCLUSION

Based on the facts and authorities set forth above, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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Counsel for Petitioner

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Claudia DUARTE, Appellant,

v.

ROYAL CARIBBEAN CRUISES, LTD., Appellee.

No. 3D99-160.

District Court of Appeal of Florida, Third District.

April 5, 2000.

Rehearing Denied July 19, 2000.

Charles R. Lipcon, Miami; Cooper & Wolfe, and Marc Cooper, and Nancy Ciampa, Miami, for appellant.

McIntosh Sawran Peltz & Cartaya; Hicks & Anderson, and Mark Hicks, and Dinah Stein, Miami, for appellee.

Before SCHWARTZ, C.J., and GERSTEN, J., and NESBITT, Senior Judge.

NESBITT, Senior Judge.

Appellant is a seaman who had been receiving maintenance and cure in Miami for several months when she was seriously injured in an automobile accident. After Royal Carribean Cruises, Ltd. (RCCL) refused to pay her maintenance and cure for expenses arising from this accident, the Appellant filed this suit. The trial court granted summary judgment in favor of RCCL. We reverse.

Maintenance and cure is an ancient duty under the law of admiralty that arises against a shipowner in favor of a seaman who becomes ill, injured, or incapacitated, or whose condition becomes aggravated or enhanced for any reason, at least until the time that the seaman has

achieved maximum medical recovery. *See Vaughan v. Atkinson,* 369 U.S. 527, 82 S.Ct. 997, 8 L.Ed.2d 88 (1962). Admiralty courts have traditionally been liberal in interpreting the scope of this duty. *Id.* at 531-32, 82 S.Ct. 997. The seamen are wards of the court and maintenance and cure should be afforded as long as there is any ambiguity or uncertainty about the continuation of that status. *Id.* "The nature and foundations of the liability require that it be not narrowly confined or whittled down by restrictive and artificial distinctions defeating its broad and beneficial purposes." *Aguilar v. Standard Oil Co.,* 318 U.S. 724, 735, 63 S.Ct. 930, 87 L.Ed. 1107 (1943).

In the instant case, the Appellant was receiving maintenance and cure at the time of the accident because she had yet to obtain maximum medical recovery. Under such a situation, a seaman is still in the service of the ship and thus entitled to maintenance and cure for the additional injuries incurred. To hold otherwise would fly in the face of the long standing principles enunciated above. Accordingly, the trial court's order granting summary judgment to RCCL is reversed.

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT, IN
AND FOR DADE COUNTY, FLORIDA

CASE NO. 98-2245 (05)

CLAUDIA DUARTE,

Plaintiff,

vs.

ROYAL CARIBBEAN CRUISES, LTD.,

Defendant.

_____/

ORDER ON DEFENDANT, ROYAL CARIBBEAN CRUISES LTD.'S, MOTION FOR FINAL SUMMARY JUDGMENT

THIS CAUSE having come on to be heard on Defendants, ROYAL CARIBBEAN CRUISES LTD.'S, Motion For Final Summary Judgment on July 28, 1998, and the Court having heard argument of counsel, and being otherwise advised in the Premises, it is hereupon,

ORDERED AND ADJUDGED that said Motion be, and the same is hereby GRANTED.

DONE AND ORDERED in Chambers, at Miami, Dade County, Florida this JUL 28 1998 day of July, 1998.

JON I GONDON
CIRCUIT JUDGE

Copies to:

Charles R. Lipcon, Esquire, Law Offices of Charles R. Lipcon, Attorneys for Plaintiff, One Biscayne Tower, Suite

2480, Two South Biscayne Boulevard, Miami, Florida 33131

Douglas M. McIntosh, Esquire, McIntosh, Sawran & Craven, P.A., P.O. Box 029008, Fort Lauderdale, Florida 33302-9008

[1] IN THE CIRCUIT COURT OF
THE 11TH JUDICIAL CIRCUIT IN
AND FOR DADE COUNTY, FLORIDA

CASE NO.: 98-2245 (05)

CLAUDIA DUARTE,

Plaintiff,

vs.

ROYAL CARIBBEAN
CRUISES, LTD.,

Defendant.

_____/

73 West Flagler Street
Miami, Florida
July 28, 1998
11:45 a.m. – 12:05 p.m.

Hearing in above-styled cause taken before Honorable Jon I. Gordon, Judge of the Circuit Court, reported by Keith A. Selkowitz, Shorthand Reporter and Notary Public in and for the State of Florida at Large, pursuant to Notice filed in the above cause.

---

[2] APPEARANCES:

ON BEHALF OF THE PLAINTIFF:

LAW OFFICES OF CHARLES R. LIPCON
One Biscayne Tower, Suite 2480
Two South Biscayne Boulevard
Miami, Florida 33131
BY: CHARLES R. LIPCON, ESQUIRE

ON BEHALF OF THE DEFENDANT:

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BY: DOUGLAS M. MCINTOSH, ESQUIRE

---

[3] THE COURT: How can I help you?

MR. MCINTOSH: Judge, this is our motion for final summary judgment.

Doug McIntosh on behalf of Royal Caribbean Cruise, Ltd.

THE COURT: Okay.

MR. MCINTOSH: And Mr. Lipcon is here, of course, for the plaintiff.

Judge, this is just by way of history, very quickly. I call this case Duarte Two because there's two cases pending in your court brought by Claudia Duarte against Royal Caribbean. There's obviously one claim brought by Ms. Duarte in 1996 for, Judge, again, unseaworthiness and paying no benefits for the accident that she suffered on board the vessel called Sovereign of the Seas.

THE COURT: Wait a second. I'm missing the file. Okay.

MR. MCINTOSH: This was set sometime before, and I had sent a complete copy of my motion and

law, but I have extra copies of law with me today. You have Mr. Lipcon's opposition, I think.

THE COURT: Let me ask you to start over again.

MR. MCINTOSH: Okay. Sir, Royal Caribbean, of [4] course, is the owner of a vessel called Sovereign of the Seas, and Ms. Duarte was a crew member on one of our ships, a cocktail waitress, and she was injured in 1996 when she fell down some stairs and then also slipped in an area on the vessel. She brought a 1996 claim through Mr. Lipcon's office for negligence and unseaworthiness as a result of that alleged accident.

The particular dates that I think are imperative for our hearing today are, she had a contract of employment with us that was dated 9-6 of '96. Her date of accident when she went out on medical was 9-4-1996, and that contract of employment ended and terminated on March 7, 1997, 3-7 of '97. That 1996 contract –

THE COURT: 3-7.

MR. MCINTOSH: '97.

Now, she went out on medical parole, as I said, on September 14, 1996 in order to get medical care and treatment for the injuries that she suffered on the vessel. We were, of course, sued at the same time, and that litigation has been ongoing.

On December 14, 1997, while she was here in Miami – and let me back up just a minute. She [5] reached MMC with her knee condition, and MMC, maximum medical cure is what that stands for under the maritime law with respect to her back treatment.

However, during the course of those treatments, while she was still under contract with us, this is before March 7 of '97, she had a problem here in the neck and complained of pain and things like that. We had her checked, out as we're dutybound to do because she's under contract and subject to the call of the vessel.

It's discovered that she had a thyroid tumor. She's treated for that, and she's diagnosed with some thyroid cancer simultaneous to the other. Again, we issue, initiated thyroid cancer treatments. This is while she's still under contract before termination of the contract on March 7, '97. So she reached maximum cure with the orthopedic injuries and we continue to treat her for the cancer treatment, some radiation therapy and things of that nature.

On December 14, 1997, she was in an automobile with a friend at night, not going to her – or from the doctor's, not serving the vessel in any way, but is out riding with a friend. There's an [6] accident. She's severely injured. She goes to Jackson Memorial Hospital. They perform surgery. They attach a foot. And the medical bills, as I'm sure the Court can imagine, are very high.

Mr. Lipcon then filed an emergency complaint that fell in front of Judge Simons which was transferred over here. They came in on an emergency motion to provide maintenance and cure. Your Honor held, "I can't order maintenance and cure; that's a question that has to be litigated." And we said yes, and we believe it's a summary judgment question. And now we're here today on this second, what I call Duarte Two.

Our motion for summary judgment really, Judge, has asked you to deal with two issues. Although one is indirect that has been raised by Mr. Lipcon in his response.

The primary issue – and I should mention, Judge, by the way, the record reflects we've done a notice of filing. We've paid $69,000 in medical expenses for Ms. Duarte to this point in time relative to her maintenance and cure, both for medical expenses and for maintenance or the substantive wages that she's entitled to under the maritime law.

[7] The correspondence that we have for the Court is, was the plaintiff subject to call of the vessel as that term is used in the maritime law on December 14, 1997, when she had her accident, to give rise to a maintenance and cure entitlement.

Our assertion by our motion for final summary judgment is absolutely not, she was not, and she was not entitled to maintenance and cure as a matter of law.

THE COURT: What does that mean?

MR. MCINTOSH: Subject to the call of the vessel has been construed by two courts going way back.

As you know, the maritime law is deeply rooted, but the employer's obligation for maintenance and cure in the Farrell versus United States case, 1949 Supreme Court case, says that the right to maintenance and cure depends on whether the crew member is in the service of the vessel or is answerable to its call of duty.

Then there's a case describing what call of duty is, and that's the Baker versus Ocean Systems case that we've cited, and I have copies of these cases for you. But

the Baker case, which is right here, which is a Fifth Circuit case from 1972, says [8] that there must be some binding obligation on the part of a seaman to join the vessel. It's a reciprocal obligation, if you will, between employer, ship owner and seaman crew member and the cases are keyed most often to articles or contracts of the seaman to perform for the owner.

THE COURT: The accident occurred December of 1997, and her contract expired 3 of '97?

MR. MCINTOSH: Right.

THE COURT: And so, you say she wasn't under contract to come back to the vessel, so she wasn't under –

MR. MCINTOSH: She's not answerable to the call of duty and not subject to the call of the vessel and that is the key. That's what all these cases focus on, the three, four cure maintenance cases that we have found on this issue. There is not a lot, granted.

But there's one that I have here called Keeping versus Dawson, which is a First Circuit case, 1959, and it stands for the proposition that if the plaintiff is not answerable to the call of duty of the master, there's no extension of maintenance and cure to an expense of illness ashore. [9] Then there's Sellers versus Dixilyn Corp., which is a Fifth Circuit 1970 case that we found and, in fact, this was an automobile accident case that happened to a crew member while the crew member was ashore, and it was during the seaman's off duty time while ashore. And the Court found that the seaman was not answerable to the call of duty of the vessel, and therefore, not entitled to maintenance and cure benefits for the automobile accident that

he suffered. And I would suggest that that is quite analogous to what our situation here is, and I believe that the Court needs to focus on the question of whether, as a matter of law, Ms. Duarte was answerable to the call of her vessel in December of 1997 when she had her automobile accident. And I think you will find on this record that, indeed, she was not because her contract had terminated.

Now, Mr. Lipcon has argued in opposition, and I'll let him, of course, present his argument. But he's stated that she was on medical parole and therefore still under service of the company.

Well, that is not so. A crew member on medical parole does not necessarily have the obligation to return to the vessel or entitlement [10] to return to the vessel, only articles of seamanship or contracts of employment allow the crew member to return to employ or that obligate the crew member to return to employ and once a crew member's articles or contract is terminated, they have no right or ability to return to the employ of the vessel.

In fact, when the medical parole is up, by Immigration and Naturalization Service standards, when you medically parole someone, INS keeps them in the country, because otherwise, you'll –

THE COURT [sic]: The ship is dutybound to pay to send them home. You can't just say, come back to the vessel and keep them here until we get the ship back in port or anything like that. They are dutybound to expel the person from the United States.

And Mr. Lipton has raised another argument, which I must admit, is quite unique.

THE COURT: Go ahead. Please continue, finish.

MR. MCINTOSH: Sure. As I was starting to say, Mr. Lipcon has raised a unique argument that the Immigration form, which is called an I-5-10, which is a guarantee of payment that the ship owner [11] has to execute to allow the crew member to be landed here which somehow guarantees medical payment for any and all expenses while the crew member is in the United States.

I'm going to let Mr. Lipcon, frankly, confuse the Court a little bit with that argument and reserve my rebuttal.

But I do wish to say at this point, the motion that anything in the Immigration code could surplant or replace maritime law must be resurrected by this court case in long-standing, that maritime law occupies the field and prevents any other areas of the law and should be governed by general maritime law.

THE COURT: Thank you.

Yes, sir.

MR. LIPCON: Okay. In response, Your Honor, Claudia Duarte, as a seaman or a seawoman, was entitled to maintenance and cure if she became sick or injured in the service of vessel. Maintenance is money for goods and shelter, and cure is her medical care, and that continues to the point where she reached maximum medical improvement. That's when the doctors say, "We can't help you anymore." And it doesn't matter whether the seaman has a [12] contract or not. It's not depending on

their being under contract at all. There's no such requirement in the law. And that's why, even in this case, Claudia Duarte's medical care continued long past the end of her contract for those other items other than her auto accident injuries. She was being treated for a knee problem. She had surgery. She was being treated for cancer. And what the cruise lines can do, Your Honor, is they can do three things.

One is, they can keep the seaman on board the vessel and treat them there and/or they can send them to their home, repatriate them and treat them in their hometown or they can bring them to Miami as Royal Caribbean does. Royal Caribbean brings the crew members here, not for the convenience of the seaman, but for the convenience of Royal Caribbean Cruise Lines. They have their own health network set up, their own care arrangements.

So for purposes of RCCL and in treating her knee problems and cancer problems, they were treating her here in Miami, Florida. She is not from Miami; she is from Colombia. So she was not in her home town, and that will be the distinction on defendant's case when I get to this.

[13] Oh, in the order for RCCL to bring Ms. Duarte into the United States, Your Honor, they have to make sure she has the right kind of visa. The U.S. Government will not allow a foreign seaman to be in the U.S. unless their employer signs the medical parole form. And under this medical parole form, and here's the one that was in effect at the time of the accident, Your Honor. That's following December 1. There is a whole series of them that are in the record. The cruise line guaranteed to be responsible for her medical care.

Now, it doesn't say medical care limited to the one word written in there. It just says her medical care. And I've deposed the agent who filled out the form and I deposed the cruise lines. They do not intend, when I tell you in the one word there, because on each of the forms, they filled in different injuries. One says cancer, another says thyroid problem, another says knee problem. They just fill in the first thing that comes to mind.

So the U.S. Government wants to know, when RCCL brings crew members like Ms. Duarte to the United States, that she's not going to become a public charge, that they'll support her and they'll [14] pay medical bills.

THE COURT: I think they say they don't mind doing this for the injuries suffered aboard ship, but they don't feel obliged to pay those expenses for injuries unconnected with their employment.

MR. LIPCON: Yes.

THE COURT: Talk to me about call of serve or call of the vessel.

MR. LIPCON: Yes. In service – I'm getting there, Your Honor. This lady had this auto accident while she was here in Miami. So the question is, is she in the service of the vessel?

I've cited in my memo, very extensive memo for Your Honor, and we carefully go throughout different cases where there's a case where a man is on shore leave, is drinking and falls off a balcony in an alley. He's not doing anything for the vessel, but the Courts have construed the fact that he's on shore leave is something that's

necessary as part of being a seaman, that they are covered on shore leave.

THE COURT: Do you have any case that talks about where the contract has expired and, you know, if they had no obligation to return to the ship, is called to the ship, they say, "Well, come on back [15] to the ship." She says, "Oh, I'm having a good time here, I don't want to go back to the ship."

MR. LIPCON: There's the Smith case, Your Honor. The closest case analogous to what we have here is the Smith case and this happened in Miami, Florida.

Let me make sure this is the right case, Judge.

No, I gave you the wrong case. Sorry. It's the Archer case. Sorry, Judge.

The Archer case is an Eleventh Circuit case, Your Honor. This accident happened in Miami. In the Archer case, the seaman – the vessel went into dry-dock, so the seaman's contract was cancelled. He signed a new contract that would commence somewhat later, and the [sic] during the interim while the seaman was in Miami waiting for the new contract to start, had an accident, and in that case had an auto accident here in Miami. And in the Archer case, the Court said, well, we're going to say that him waiting around to join the vessel is analogous to a seaman being on shore leave and we're going to cover that auto accident, even though he wasn't under a contract at that time, he was here in Miami. And I would submit, Your Honor, [16] that there are no cases that are going to say exactly what you want them to say, but there's some close cases and this is one of them.

And the defendant's case, if Your Honor looked at them, you'll see that they're not blue water seaman cases. There's a distinction between someone working on a vessel, going out to sea and someone who is on a drillery that's drilling in the Gulf. What has been given for the most part, the drilling case where a seaman would go home at the end of the week, they have a week on, a week off, a week on, a week off. They're in their hometowns, injured in their homes.

This lady is in Miami, not at her request, but the request of the cruise line. Had she been injured in her hometown of Colombia, I would agree with that. But since she was here at the request of the vessel and at the convenience of the vessel, that puts her in the service of the ship, just like this man who was waiting to join the vessel. That's number one, Your Honor.

Number two, the medical paroles have obligated them to not make her a charge to the citizens of Dade County or the United States. She has not gotten billed. There's over $100,000 in Jackson, [17] and she needs more medical care, possibly more surgery. Otherwise, that would make the U.S. into a dumping ground for seaman [sic] who are sick or injured.

It's simple. A ship comes in, says you're contract is over and dumps them in the U.S., let's them run up big bills at the local hospital and says we're not responsible, and that's just not how it's supposed to work.

And, lastly, Your Honor, I filed the affidavit of Ramon Howard, who's another seaman who worked for RCCL, who developed a tooth problem while he was getting medical care, and correspondence is attached.

They arranged to go to the dentist. They had his tooth pulled at their expense and they didn't raise these kinds of problems. So other seaman [sic] had problems, costs of a hundred thousand dollars. They have in fact provided medical care. That's in the record. And also, they have not proven that she wasn't in the service of the vessel and they haven't proven that she wasn't subject to the call of the vessel. No affidavit, no information. That goes to that particular point, and the burden is on them.

THE COURT: Thank you.

[18] You did want to respond?

MR. MCINTOSH: Yes, Judge. I'll respond quickly.

First of all, the Archer case is completely distinguishable because Page 15 – 72 of that deposition says he had a new employment contract that required him to report to the office in Miami. He was under contract. He was required to report here while in transit, waiting assignment to a vessel. That case is exactly the type of situation I'm talking about.

If she has a contract, she's subject to the call of the vessel. We're responsible under the maintenance and cure law, just as they were in Archer. Archer had a contract. She has no contract. She's not subject to the call of the vessel.

And Mr. Lipcon is wrong, that that's in fact his admission, that if she was home in Colombia I think supports our argument. Because if you used the same analogy, if she is in Colombia, she's speaking about maintenance and cure, we can be responsible for all medical

care and treatment, just like problems INS here is responsible for, medical treatment, for thyroid treatment, which is [19] what the medical is for. She has an accident in Colombia. We're not responsible for automobile accidents in Colombia any more than we are here.

THE COURT: Thank you. I'll take it under advisement.

MR. MCINTOSH: Thank you.

I have a blank order. I'll leave it with you.

THE COURT: Thank you.

MR. LIPCON: Judge, I want us to leave – I've attached the letter, what I thought was the key case.

THE COURT: I got it.

MR. MCINTOSH: Thank you, Judge.

(Thereupon the hearing was concluded.)

[20] CERTIFICATE

STATE OF FLORIDA :
: SS.
COUNTY OF DADE :

I, Keith A. Selkowitz, being a Shorthand Reporter and Notary Public in and for the State of Florida at Large, do hereby certify that the above-styled cause pending in the above-styled court was heard before the Honorable Judge Jon I. Gordon, on July 28, 1998; that I was authorized to and did report in shorthand the proceedings and evidence in said cause, and that the foregoing pages,

numbered from 1 through 19, inclusive, constitute a true and correct transcription of my shorthand report of the proceedings at that time.

IN WITNESS WHEREOF I have hereunto affixed my hand this 2nd day of March, 1999.

/s/ Keith A. Selkowitz
Keith A. Selkowitz, NOTARY PUBLIC AT LARGE.
MY COMMISSION EXPIRES:
October 12, 2001

(SEAL) KEITH A SELKOWITZ
MY COMMISSION # CC 687807
EXPIRES: October 12, 2001
Bonded Thru Notary
Public Underwriters

IN THE DISTRICT COURT
OF APPEAL
OF FLORIDA
THIRD DISTRICT
JULY TERM, A.D. 2000
JULY 19, 2000

CLAUDIA DUARTE,

Appellant(s)/Petitioner(s)

vs.

ROYAL CARIBBEAN CRUISES, LTD.,

Appellee(s)/Respondent(s).

CASE NO.: 3D99-160

LOWER TRIBUNAL NO. 98-2245

Upon consideration, appellee's motion for rehearing and certification is hereby denied. SCHWARTZ, C.J., and GERSTEN, J., and NESBITT, Senior Judge, concur. Appellee's motion for rehearing en banc is denied. SCHWARTZ, C.J., and JORGENSON, COPE, GERSTEN, GODERICH, GREEN, FLETCHER, SHEVIN, SORONDO, RAMIREZ, JJ., concur. LEVY, J., recused.

[SEAL]

cc:
Nancy C. Ciampa
Mark Hicks
Douglas M. Mcintosh
Charles R. Lipcon

ah

SUPREME COURT of FLORIDA

TUESDAY, APRIL 3, 2001

CASE NO.: SC00-1756
Lower Tribunal No.: 3D99-160

ROYAL CARIBBEAN CRUISES, LTD. vs. CLAUDIA DUARTE

Petitioner(s) Respondent(s)

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution, and the Court having determined that it should decline to accept jurisdiction, it is ordered that the Petition for Review is denied.

No Motion for Rehearing will be entertained by the Court. *See* Fla. R. App. P.9.330(d).

WELLS, C.J., and SHAW, HARDING and QUINCE, JJ., concur.
LEWIS, J., dissents.

A True Copy
Test:

/s/ Thomas D. Hall [SEAL]
Thomas D. Hall
Clerk, Supreme Court

bh

Served:

DOUGLAS M. MCINTOSH
MARK HICKS
DINAH H [sic]. STEIN
MAUREEN E. LEFEBVRE
MARC COOPER
CHARLES R. LIPCON
HON. JON I. GORDON, JUDGE
HON. HARVEY RUVIN, CLERK
HON. MARY CAY BLANKS, CLERK

IN THE CIRCUIT COURT
OF THE 11TH JUDICIAL
CIRCUIT IN AND FOR
DADE COUNTY, FLORIDA

GENERAL JURISDICTION
DIVISION

CASE NO. 98-2245 CA 05

CLAUDIA DUARTE,

Plaintiff/Appellant,

vs.

ROYAL CARIBBEAN
CRUISES, LTD.,

Defendant/Appellee.
_____/

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Plaintiff/Appellant CLAUDIA DUARTE, appeals to the District Court of Appeal, Third District of Florida, the order of this Court entered on November 17, 1998, rendered on December 15, 1998 by the Honorable Jon I. Gordon. The nature of the orders are a final summary judgment in favor of the Defendant and an order denying plaintiff's motion for rehearing. Copies of the orders are attached.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been mailed this 13th day of January, 1999, to: Douglas M. McIntosh, Esq. and Karina P. Gonzalez, Esq.,

McINTOSH, SAWRAN, PELTZ & CARTAYA, P.A., Broward Financial Centre, 500 East Broward Boulevard, Suite 1800, P.O. Box 029008, Ft. Lauderdale, FL 33394.

Respectfully submitted,

LAW OFFICES OF
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By: /s/ Sharon L. Wolfe
SHARON L. WOLFE
Fla. Bar No. 222291

IN THE CIRCUIT COURT
OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND
FOR DADE COUNTY,
FLORIDA

CASE NO. 98-2345 (05)

CLAUDIA DUARTE,

Plaintiff,

vs.

ROYAL CARIBBEAN
CRUISES, LTD.,

Defendant.
_____/

FINAL SUMMARY JUDGMENT IN FAVOR OF DEFENDANT ROYAL CARIBBEAN CRUISES LTD.

THIS CAUSE having come on previously to be heard on the Defendant ROYAL CARIBBEAN CRUISES LTD.'s Motion for Final Summary Judgment, on July 28, 1998, and following the entry of an Order granting Final Summary Judgment dated July 28, 1998, the Court does now hereby enter Final Summary Judgment in favor of the Defendant ROYAL CARIBBEAN CRUISES LTD and against the Plaintiff CLAUDIA DUARTE. Plaintiff shall take nothing by this action and Defendant shall go hence without day. [sic] The Court shall retain jurisdiction for any taxation of costs as may be allowed by law.

DONE AND ORDERED in Chambers at Miami, Miami-Dade County, Florida, this ___ day of Nov. 17, 1998, 1998.

/s/ JON I. GORDON
JON I. GORDON, CIRCUIT COURT JUDGE

Copies Furnished To:

Charles Lipcon, Esq., Law Offices of Charles Lipcon, 1 Biscayne Tower, Suite 2480, 2 South Biscayne Blvd., Miami, Florida 33131 Douglas M. McIntosh, Esq., McIntosh, Sawran & Craven, P.A., Broward Financial Centre, 500 East Broward Boulevard, Suite 1800, P.O. Box 029008, Fort Lauderdale, Florida 33394

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

Claudia Duarte Plaintiff(s) vs. Royal Caribbean Defendant(s) /	DIVISION: 05 CASE NO.: 98-2245 **ORDER DENYING/ GRANTING PLAINTIFF'S/ ~~DEFENDANT'S~~ MOTION FOR REHEARING AS TO FINAL JUDGMENT**

THIS CAUSE having come on to be heard on 12-15-98 on Plaintiff's/~~Defendant's~~ Motion

For Rehearing as to Final Judgment Dated Nov. 17, 1998 and Motion to Vacate

and the Court having heard argument of counsel, and being otherwise advised in the Premises, it is hereupon,

ORDERED AND ADJUDGED that said Motion be, and the same is hereby

denied

DONE AND ORDERED in Chambers, at Miami, Dade County, Florida this 15 day of December, 1998.

Circuit Judge

Copies furnished to:
Doug McIntosh
Charles R. Lipcon

IN THE DISTRICT COURT
OF APPEAL
OF FLORIDA THIRD DISTRICT

CASE NO. 99-00160

L.T. No. 98-2245 CA 05

ROYAL CARIBBEAN CRUISES, LTD.,

Defendant/Petitioner,

vs.

CLAUDIA DUARTE,

Plaintiff/Respondent.

_____/

NOTICE TO INVOKE DISCRETIONARY JURISDICTION

NOTICE IS GIVEN that Defendant/Petitioner, ROYAL CARIBBEAN CRUISES, LTD., invokes the discretionary jurisdiction of the Supreme Court to review the decisions of this Court rendered July 19, 2000. The decisions expressly and directly conflict with decisions of another district court of appeal or of the supreme court on the same questions of law.

Respectfully submitted,

Douglas R. McIntosh, Esq.
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-and-

HICKS, ANDERSON &
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By: /s/ Dinah Stein
MARK HICKS
Fla. Bar No. 142436
DINAH STEIN
Fla. Bar No. 98272

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 18 day of August, 2000 to:

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/s/ Dinah Stein

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT
OF APPEAL

OF FLORIDA

THIRD DISTRICT

JANUARY TERM, A.D., 2000

CLAUDIA DUARTE,	**	
Appellant,	**	
vs.	**	CASE NO. 3D99-160
ROYAL CARIBBEAN CRUISES, LTD.,	**	LOWER TRIBUNAL NO. 98-2245
Appellee.	**	

Opinion filed April 5, 2000.

An appeal from the Circuit Court for Dade County, Jon I. Gordon, Judge.

Charles R. Lipcon; Cooper & Wolfe, and Marc Cooper, and Nancy Ciampa, for appellant.

McIntosh Sawran Peltz & Cartaya; Hicks & Anderson, and Mark Hicks, and Dinah Stein, for appellee.

Before SCHWARTZ, C.J., and GERSTEN, J., and NESBITT, Senior Judge.

NESBITT, Senior Judge.

Appellant is a seaman who had been receiving maintenance and cure in Miami for several months when she

was seriously injured in an automobile accident. After Royal Carribean Cruises, Ltd. (RCCL) refused to pay her maintenance and cure for expenses arising from this accident, the Appellant filed this suit. The trial court granted summary judgment in favor of RCCL. We reverse.

Maintenance and cure is an ancient duty under the law of admiralty that arises against a shipowner in favor of a seaman who becomes ill, injured, or incapacitated, or whose condition becomes aggravated or enhanced for any reason, at least until the time that the seaman has achieved maximum medical recovery. *See Vaughan v. Atkinson,* 369 U.S. 527 (1962). Admiralty courts have traditionally been liberal in interpreting the scope of this duty. *Id.* at 531-32. The seamen are wards of the court and maintenance and cure should be afforded as long as there is any ambiguity or uncertainty about the continuation of that status. *Id.* "The nature and foundations of the liability require that it be not narrowly confined or whittled down by restrictive and artificial distinctions defeating its broad and beneficial purposes." *Aguilar v. Standard Oil Co.,* 318 U.S. 724, 735 (1943).

In the instant case, the Appellant was receiving maintenance and cure at the time of the accident because she had yet to obtain maximum medical recovery. Under such a situation, a seaman is still in the service of the ship and thus entitled to maintenance and cure for the additional injuries incurred. To hold otherwise would fly in the face of the long standing principles enunciated above. Accordingly, the trial court's order granting summary judgment to RCCL is reversed.

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NUMBER: 98-2245 (05)

CLAUDIA DUARTE,

Plaintiff,

vs.

ROYAL CARIBBEAN CRUISES LTD.,

Defendant.

DEFENDANT ROYAL CARIBBEAN CRUISES LTD.'S MOTION FOR FINAL SUMMARY JUDGMENT

The Defendant, ROYAL CARIBBEAN CRUISES LTD. ("RCCL") through its undersigned attorneys and pursuant to Florida Rule of Civil Procedure 1.100, 1.510 and other applicable rules, moves this Court for an entry of Final Summary Judgment on Plaintiff's complaint for maintenance and cure for an injury she sustained as a result of a automobile collision on approximately December 14, 1997. Plaintiff has asserted the position that RCCL has an obligation to provide maintenance and cure for injuries she sustained unrelated to her employment with RCCL. Defendant's argument is that based on general maritime law and case law interpreting same, it has no legal obligation or duty to pay maintenance and cure for injuries which the Plaintiff sustained in a automobile accident where at the time of injury, she was not subject

to the call of the ship, was not bound by a contract of employment, was not returning or departing from the vessel, and had absolutely no duty to perform the vessel in any way whatsoever. See generally, *Farrell v. United States*, 69 S.Ct. 707 (1949); *Baker v. Ocean Systems, Inc.*, 454 F.2d 379, 384 (5th Cir. 1972); *Keeping v. Dawson*, 262 F.2d 868 (1st Cir. 1959); and *Sellers v. Dixilyn, Corp.*, 433 F.2d 446 (5th Cir. 1970). This Defendant files this Motion for Final Summary Judgment because it has no legal duty to pay maintenance and cure for injuries which are unrelated in any way to the Plaintiff's former status as a "seaman" working aboard one of Defendant's vessels and in support of its Motion, the Defendant sets out the *Pertinent Material Facts* of this matter and its supporting *Memorandum of Law* for consideration by this Court in arriving at its decision.

PERTINENT MATERIAL FACTS

1. Ms. Duarte, the Plaintiff, was a waitress onboard Defendant's vessel the "Sovereign of the Seas". The date of her last employment contract with RCCL was for a six (6) month period effective September 6, 1996 through March 7, 1997. Plaintiff signed off the vessel for medical care and treatment for an alleged on-the-job injury on September 14, 1996. Plaintiff was receiving care and treatment for left knee injuries as a result of the on-the-job incident and was also receiving medical care for thyroid cancer an illness that manifested itself while Plaintiff was in the service of the vessel, and subject the terms of the employment contract.

2. Plaintiff is currently travelling under a Complaint alleging Failure to Provide Maintenance and Cure, and Failure to Treat. (Complaint attached as Exhibit "A") The Complaint alleges right knee injuries from an automobile accident on December 14, 1997, ***which is the subject of this Motion for Final Summary Judgment.***

MEMORANDUM OF LAW

Maintenance and cure is a general maritime law remedy available to seamen against their employers when they are injured or fall ill while in the service of the vessel; there is no requirement that there be a causal relationship between the employment and the injury except that *the injury must occur while the seaman is subject to the call of duty. Farrell v. United States*, 69 S.Ct. 707, 709 (1949); *Calmar S.S. Corp. v. Taylor*, 303 U.S. 651, 653 (193) [sic]. The Supreme Court in *Farrell* and *Calmar*, stated a seaman's right to maintenance and cure depends on whether he is in the service of the vessel, by which is meant that the seaman must be answerable to its call of duty. *Farrell*, 69 S.Ct. at 709. An employer's obligation is to pay maintenance and cure for any illness, or injury which occurred, was aggravated, or manifested itself while the seaman was in the service of the ship. *Calmar*, 303 U.S. at 530.

The purpose of maintenance is to compensate a seaman for the value of the meals and lodging which he would have received aboard the vessel until such time as the seaman is fit for duty. *Vella v. Ford Motor Co.*, 421 U.S. 1 (1975). Cure is defined as the reasonable costs of medical expenses for treatment paid on behalf of the seaman

until the seaman is fit for duty or until maximum medical cure is reached. *Pelloto v. L & N Towing, Co.*, 604 F.2d 396 (5th Cir. 1979). The tests for maximum medical cure is that point " . . . when it appears probable that further treatment will result in no betterment of the seaman's condition." *Id.*

The determination of whether a seaman is "in the service of the vessel" and "answerable to the call of duty" at the time of the accident, depends on the particular facts and circumstances of each case. *Baker v. Ocean Systems, Inc.*, 454 F.2d 379, 384 (5th Cir. 1972). The Fifth Circuit in the case of *Baker* has stated that the seaman's answerability to the "call to duty" imports that at the very least there be some binding obligation on the part of the seaman to serve the vessel. Furthermore, in *Baker*, the Fifth Circuit Court stated that when the seaman remains bound to the vessel, the shipowner has a corresponding obligation to pay him maintenance and cure in the case of injury. It is this reciprocal obligation that determines an individual's status as a seaman and furthermore determines whether the seaman is in the service of the vessel. *Id.*

At the time of the incident, Mrs. Duarte was not serving any direct interests of RCCL. In fact, the plaintiff's contract of employment commenced on September 6, 1996, and terminated on March 7, 1997. The plaintiff signed off the vessel on September 14, 1996 to receive medical care and treatment for her left knee complaints. The automobile accident occurred on December 14, 1997, well beyond the period of time of the expiration of the employment contract. At the time of the incident, *Mrs. Duarte had no employment contract with RCCL, had no duty*

to perform for the vessel, was not in the service of the vessel, and was not departing or returning to the vessel from shore leave. See, Aguilar v. Standard Oil Co., 318 U.S. 724 (1943).

The injuries sustained in the 1997 automobile accident by the Plaintiff were unrelated to her service to the ship. Furthermore, Mrs. Duarte did not have a permanent position on the ship at the time of her accident. *Keeping v. Dawson*, 262 F.2d 868 (1st Cir. 1959). It is apparent that when she was unfortunately injured, she was serving no direct or indirect interest of RCCL. *Sellers v. Dixilyn, Corp.*, 443 F.2d 446 (5th Cir. 1970). The court in *Sellers*, found that an employer was not liable for maintenance and cure because the seaman was not answerable to the call of duty when he was injured in an automobile accident occurring during off duty time. (In that case, the contract for employment provided for seven days tour of duty to be followed by seven days off duty) *Id.* The Court in the case of *Haskell v. Socony Mobil Oil Co.*, 237 F.2d 707, 710 (1st Cir. 1956) rejected a claim for maintenance and cure where the injury occurred while the Plaintiff *was* on vacation. The Court said that proof of willingness to serve does not show an obligation to do so. *Id.*

CONCLUSION

We believe our argument that RCCL has no duty or obligation to pay maintenance and cure for injuries Plaintiff sustained shoreside while not in the service of the ship, is well grounded in general maritime law and in the cases interpreting this issue. A seaman may recover for injuries suffered during shore leave while on personal business. But for a seaman who lives shoreside to be

entitled to maintenance and cure, he *must* prove that the shoreside injury was incurred while in the services of the ship. *Braen v. Pfeifer Oil Transportation Co.*, 361 U.S. 129 (1959); *Liner v. J. B. Talley & Co.*, 618 F. 2d 327, 332 (5th Cir. 1980). The plaintiff was not a "seaman" subject to the call of duty, or the call of the vessel or her captain at the time of her injury. There was no binding obligation on the part of the Plaintiff, Mrs. Duarte, to serve the ship in any way at the time of her accident. *Baker*, 454 F.2d at 379. Defendant requests that this Court find that Defendant has no legal obligation to provide maintenance and cure for an injury that is unrelated in any manner to the Plaintiff's employment with RCCL, and grant its Motion for Final Summary Judgment.

CERTIFICATE OF SERVICE

WE CERTIFY that a true and correct copy of the foregoing has been mailed to Charles R. Lipcon, Esquire, One Biscayne Tower, Suite 2480, 2 South Biscayne Boulevard, Miami, Florida 33131 on this 14th day of May, 1998.

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By: /s/ Karina P. Gonzalez
Karina P. Gonzalez
Florida Bar No.: 980455

Douglas M. McIntosh
Florida Bar No.: 325597

EXHIBIT "A"

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

Claudia Duarte

Plaintiff,

CASE NO. DIVISION

FLORIDA BAR #137942

vs.

Royal Caribbean Cruises, Ltd.

Defendant(s).

_____/

COMPLAINT, DEMAND FOR JURY TRIAL WITH INTERROGATORIES, REQUEST FOR PRODUCTION, REQUEST FOR ADMISSIONS,

Plaintiff sues Defendant(s) and alleges:

1. This is an action seeking damages in excess of $15,000.00.

2. Defendant(s), at all times material hereto, personally or through an agent;

a. Operated, conducted, engaged in or carried on a business venture in this state and/or county or had an office or agency in this state and/or county;

b. Were engaged in substantial activity within this state;

c. Operated vessels in the waters of this state;

d. Committed one or more of the acts stated in Florida Statutes, Sections 48.081, 48.181 or 48.193;

e. The acts of Defendant(s) set out in this Complaint occurred in whole or in part in this county and/or state.

3. Defendant(s) are subject to the jurisdiction of the Courts of this state.

4. The causes of action asserted in this Complaint arise under the General Maritime Law of the United States.

5. At all times material hereto, Defendant(s) owned, operated, managed, maintained and/or controlled the vessel M/S Sovereign Of The Seas.

6. At all times material hereto, Plaintiff's employer was an agent of the shipowner and/or ship operator.

7. On or about Dec. 14, 1997, Plaintiff was employed by Defendant(s) as a seaman and was a member of the vessel's crew. The vessel was in navigable waters.

COUNT I

FAILURE TO PROVIDE MAINTENANCE AND CURE

8. On or about the previously stated date, Plaintiff while in the service of the vessel as a crew member was injured. Plaintiff was involved in a serious auto accident which caused plaintiff to lose her foot which was reattached in surgery. Plaintiff needs someone to help her post surgery as well as follow up medical visits to try and save her foot. At the time of this auto accident, plaintiff was staying on shore being treated for other ailments. This treatment was and is being provided by defendant. At the time of the incident plaintiff was in the service of the vessel and as such is entitled to medical care for the

injury suffered in the auto accident. Defendant has refused to acknowledge its responsibility for the plaintiff's medical care for the auto accident as well as her maintenance.

9. Under the General Maritime Law, Plaintiff, as a seaman, is entitled to recover maintenance and cure from Defendant(s), until he is declared to have reached maximum possible cure. This includes unearned wages (regular wages, overtime, vacation pay and tips), which are reasonably anticipated to the end of the contract or voyage which ever is longer.

10. Defendant(s) willfully and callously delayed, failed and refused to pay or provide Plaintiff's entire maintenance and cure so that Plaintiff has become obligated to pay the undersigned a reasonable attorney's fee. In addition Defendant(s) are late in paying the maintenance and cure.

11. Defendant(s) failure to pay or provide Plaintiff's entire maintenance and cure is willful, arbitrary, capricious, and in callous disregard for Plaintiff's rights as a seaman. As such, Plaintiff would be entitled to additional damages as well as punitive damages and attorney's fee under the General Maritime Law of the United States.

COUNT II

FAILURE TO TREAT

12. Defendant(s) failed to promptly provide Plaintiff with prompt, proper, adequate, and complete medical care. Defendants failed to select and utilize competent, skilled and properly trained medical care providers with

proper and adequate medical equipment with respect to the Plaintiff's medical care. Defendants failures contributed to Plaintiff suffering additional pain, disability and/or prolonged Plaintiff's recovery.

WHEREFORE, Plaintiff demands judgment against Defendants for compensatory and punitive damages, wage penalties, attorney's fees and interest as permitted by law. Plaintiff also demands trial by jury.

LAW OFFICES OF
CHARLES R. LIPCON
Attorneys for Plaintiff
Suite 2480, One Biscayne Tower
Miami, Florida 33131
Telephone: (305) 373-3016

By /s/ _____
CHARLES R. LIPCON

IN THE CIRCUIT COURT OF THE 11th JUDICIAL CIRCUIT IN AND FOR Dade COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 98-2245 DIVISION 05

FLORIDA BAR #137942

Claudia Duarte,

Plaintiff,

vs.

Royal Caribbean Cruises, Ltd.,

Defendant

_____/

PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

I HEREBY CERTIFY that a true copy of the foregoing has been mailed to Douglas McIntosh, Esquire, McIntosh, Sawran & Cravan, 500 E. Broward Boulevard #1800, Fort Lauderdale, Florida 33302, on June 4, 1998

LAW OFFICES OF
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By /s/ [Illegible]
CHARLES R. LIPCON

MEMORANDUM

The issue presented by Defendant's motion for summary judgment is whether a seaman who is injured, while on shoreside medical leave under a written guarantee of payment of medical expenses, for an unrelated injury is considered "in the service of the vessel" at the time she is injured while on leave or in the alternative if the Defendant is liable under the written guarantee of payment even if the Plaintiff is not "in the service of the vessel". Although Plaintiff has found any cases directly on point, the answer is unquestionably, "yes."

The leading case interpreting what is meant by "in the service of the vessel," is *Warren v. United States*, 340 U.S. 523 (1951), which involved a seaman on shore leave who was injured at a dance hall while drinking wine. The Court, reasoning that relaxation and shore leave for the crew are essential to the smooth functioning of a vessel, concluded that the seaman was in the service of the vessel at the time of the injury and accorded him maintenance and cure.

In *Archer v. Trans/American Services, Ltd.*, 834 F.2d 1570 (11th Cir. 1988), the plaintiff was injured while between voyages in an automobile accident. Because the plaintiff was injured the day after reporting in at his employer's office the court concluded he was in the service of the ship at the time of his injury, even though he did not yet begin his employment contract.

Accordingly, a seaman will be considered in the service of his vessel if he is at a location for the convenience of his employer at the time of his injury. *See Smith v. United States*, 167 F.2d 550 (4th Cir. 1948). The health of a

seaman is "essential to the smooth functioning of a vessel" (see *Warren*) and shoreside medical leave is "for the convenience of the employer," rather than having to employ numerous medical specialists, house expensive and bulky medical equipment, and provide beds for numerous injured seamen aboard its ships. As a result, a seaman on shoreside medical leave would be considered, for all legal intents and purposes, to be "in the service of the vessel."

MEDICAL PAROLE

At the time of the auto accident, the Plaintiff was in the United States under a medical parole arranged by the Defendant.[1] In order to obtain this medical parole for Plaintiff to be allowed to enter and stay in the United States, Defendant had to guarantee payment [sic] Plaintiff's medical and other related expenses on form I-510, see: 8 CFR 253.1.

The medical parole guarantee form I-510 signed by Defendant for Plaintiff states: "I hereby guarantee to pay any and all expenses incurred or to be incurred for the hospitalization, care, and treatment, and for burial in the event of death, of the said alien crewman. This form is signed or renewed every 29 days. Plaintiff has filed a

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[1] Defendant's sworn answer to interrogatory 18 stated: "At the time of the incident, Plaintiff was on medical parole receiving maintenance and cure payments for an injury to her left leg, unrelated to the events involving the automobile accident of 1997.

copy of the form itself. A motion to compell [sic] Defendant to produce the actual forms signed for the Plaintiff is pending.

CONCLUSION

It is clear that the United States does not want foreign ship owners dumping foreign seaman [sic] in the United States with out a guarantee that they will not become wards of the state or federal government. Plaintiff's medical bills total in excess of $100,000 for the auto accident. There is no other source of substantial payment of these bills without holding the Defendant liable under the maintenance and cure obligation which incorporates the written guarantee given by defendant to the United States government.[2]

Wherefore Plaintiff requests that this Honorable Court deny Defendant's motion for summary judgment.

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[2] Discovery has revealed the only source of payment to be no fault coverage in the amount of $10,000. There is no other viable first party or third party source of payment.